

Application No.: 10/782,131

Docket No.: SPINE 3.0-455 CIP CIP

**IN THE DRAWINGS**

Reference numerals have been corrected on original drawing sheets 17 and 18 (now 18 and 19). The page numbering has been corrected on all of the sheets.

Attachment: Replacement Sheets

REMARKS

The present Amendment is in response to the Official Action mailed January 8, 2008. Claims 1 and 8 have been amended, and claims 2 and 4 have been previously canceled. Therefore, claims 1, 3, and 5-18 remain currently pending in the present case. The following sets forth Applicants' remarks pertaining to the currently pending claims and the outstanding Action.

As an initial matter, Applicants wish to thank the Examiner for taking the time to conduct the telephone interview of April 3, 2008 with Applicants' undersigned counsel. During that discussion, the rejections of claims 1, 3, and 5-18 under 35 U.S.C. § 103(a) as being obvious over the combination of U.S. Patent No. 6,113,637 to Gill *et al.* ("*Gill*") and U.S. Patent No. 6,139,550 to Michelson ("*Michelson*") were discussed. In particular, Applicants' counsel pointed out the significant difference in structure between the retaining device of the present invention and that disclosed in *Michelson*. Where the stress relief areas formed in the head flange of the retaining device of the present invention are completely surrounded by the other material of the head flange, this is not the case in the design of *Michelson*. In fact, Applicants' counsel pointed out that the previously presented amendments of the claims were meant to cover this embodiment (best shown in Figures 19A-19C). The Examiner ultimately agreed that amending the claims to require that the head flange have a solid portion and at least one stress relief area wholly contained within the confines and not extending through the outer perimeter so that the at least one stress relief area is completely surrounded by the solid distal portion would structurally define the claims over *Michelson*. Furthermore, with regard to the tool engaging aperture shown in the retaining device of *Michelson*, the Examiner further agreed that requiring that the stress relief

area of the present invention be located at a point other than a central point of the head flange would also overcome this teaching. Applicants have amended independent claims 1 and 8 above to reflect these agreements.

In short, independent claims 1 and 8 now provide significant structural differences from that of *Michelson*. Thus, the Examiner can no longer assert that *Michelson* teaches each and every one of the limitations of the retaining device of the present invention. *Gill* does not cure this deficiency. Per suggestions from the Examiner, Applicants point out that the originally filed specification fully supports the amendments made above. In particular, Figures 19A-19C show each and every one of the limitations set forth in the currently pending claims, and at least ¶ [0089] of the originally filed specification discusses the embodiment shown in those figures. As such, Applicants respectfully submit that the above-made amendments do not constitute new matter.

Finally, Applicants note that amended Figures 19A-19C accompany the present amendment. These enclosed amended figures overcome the drawing objections set forth by the Examiner in the Action.

In light of the above, Applicants respectfully submit that independent claims 1 and 8 constitute allowable subject matter. Although each and every one of the dependent claims of the present case have not been discussed specifically herein, Applicants respectfully submit that such claims also constitute allowable subject matter based solely upon their proper dependence from one of independent claims 1 or 8, or an intervening claim. Thus, Applicants respectfully request allowance of each and every one of the currently pending claims.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited. If,

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however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: April 8, 2008

Respectfully submitted,

By

  
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